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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,543	09/10/2003	Masao Oomoto	2003_1219A	3248
513	7590	07/02/2007	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P. 2033 K STREET N. W. SUITE 800 WASHINGTON, DC 20006-1021			SCOTT, RANDY A	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/658,543	OOMOTO ET AL.
	Examiner	Art Unit
	Randy Scott	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 September 2003.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/12/04
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

### **Detailed Action**

This Office Action is in response to the Communication filed September 10, 2003.

### **Specification**

1. The disclosure is objected to because of the following informalities:

On lines 2 and 6 of par. [0011] of the specification, the term “disclosed a” should be –discloses a- and the term “it will be happened” should be –it just so happens-.

On line 2 of par. [0013] of the specification, the term “provide a service much as possible” should be – provide a service as much as possible -. The term “as when a user make a demand” should be –when a user makes a demand-.

On line 3 of par. [0014] of the specification, the term “lower quality than quality” should be – lower quality than the quality-.

On line 3 of par. [0016] of the specification the term “with the case a service” should be – with the case that a service -.

On lines 3-4, 7, and 9 of par. [0017] of the specification the term “the step checking” should be – the step of checking – and the term “the step providing” should be –the step of providing-.

On line 2 of par. [0019] of the specification the term “a use wants” should be –a user wants-.

On line 1 of par. [0020] of the specification the term “concerning to the third invention” should be –concerning the third invention -.

On lines 3-4, and 7 of par. [0020] of the specification the term “the step checking” should be – the step of checking – and the term “the step providing” should be –the step of providing-.

On line 2 of par. [0022] of the specification the term “a use wants” should be –a user wants-.

On line 3 of par. [0022] of the specification the term “with the case a service” should be – with the case that a service -.

On lines 1, and 4-5 of par. [0023] of the specification the term “concerning to the third invention” should be –concerning the third invention -.

On line 1 of par. [0024] of the specification the term “increased” should be concluded with a period to end the sentence.

On lines 2 of par. [0025] of the specification the term “the step providing” should be –the step of providing-.

On lines 2 and 4 of par. [0027] of the specification the term “the step checking” should be – the step of checking – and the term “the step notifying” should be –the step of notifying-.

On lines 2 and 4 of par. [0029] of the specification the term “the step checking” should be – the step of checking – and the term “the step providing” should be –the step of providing-.

On lines 1 and 3-6 of par. [0031] of the specification the term “concerning to the third invention” should be –concerning the third invention -.

On line 1 of par. [0033] of the specification the term “concerning to the third invention” should be –concerning the third invention -.

On lines 3-5 of par. [0033] of the specification the term “the step checking” should be – the step of checking –, the term “the step preventing” should be –the step of preventing-, and “the step judging” should be –the step of judging-.

On lines 3-4, and 6 of par. [0036] of the specification the term “the step checking” should be – the step of checking –, the term “the step recording” should be –the step of recording-, and “the step judging” should be –the step of judging-.

On lines 6 of par. [0036] of the specification the term “recording the list an item” should be – recording within the list, an item-.

On lines 2 of par. [0039] of the specification the term “further comprising, preventing from selecting” should be – further comprising, prevention of selecting -.

On line 1 of par. [0041] of the specification the term “concerning to the twelfth invention” should be –concerning the twelfth invention -.

On line 2 of par. [0043] of the specification the term “read in conjugate” should be –read in conjunction-.

On line 1 of par. [0071] of the specification the term “video data, has the function” should be – video data and has the function-.

On line 2 of par. [0071] of the specification the term “which connected” should be –which are connected-.

On line 2 of par. [0084] of the specification the term “to receive service-providing” should be –to receive a provided service-.

On line 2 of par. [0087] of the specification the term “program requires” should be –program, which requires-.

On lines 2 and 3 of par. [0412] of the specification the term “transmitting rate” should be – transmission rate-.

On lines 1-2 of par. [0414] of the specification the term “an unavailable service is prevented for a user from choosing it” should be –a user is prevented from choosing an unavailable service-.

On lines 1-2 of par. [0416] of the specification the term “to display” should be –to choose a display-.

On line 4 of par. [0416] of the specification the term “what cannot be selected” should be –that cannot be selected-.

On line 2 of par. [0435] of the specification the term “a use wants” should be –a user wants-.

On line 2 of par. [0439] of the specification the term “a use wants” should be –a user wants-.

Appropriate correction is required.

### **Claim Objections**

2. Claim 10 is objected to for the following informalities:

On line 6 of claim 10, did the applicant intent to recite the term “recording the list an item” as – recording within the list of available services, an item-? This term should be adjusted for grammatical considerations, due to the fact that the term is grammatically incorrect.

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 3 states "checking whether or not a network resource required for a service of lower quality than the quality of the requested service is reservable to generate a second result, when the first result shows that the network resource required for the requested service is reservable". Checking whether or not a network resource required for a service of lower quality than the quality of the requested service is reservable when the first result shows that the network resource required for the requested service is reservable, was not described in the applicant's specification. The applicant only provided language for the specified check occurring when the requested service is not reservable.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 8, lines 23 and 31, it can't be ascertained as to whether the term "a third result" is referring to the third result, specified in line 15 of claim 8, or an alternative third result.

7. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 10, line 4, the term "the requested service" lacks antecedent basis because a requested service had not previously been recited. Thus, the applicant should change the term "the requested service" to -a requested service-.

8. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 11, line 2, the applicant should specify whether the term "an unavailable service" is referring to the unavailable service specified in line 7 of claim 10, which claim 11 is dependent upon, or another server that is unavailable.

#### Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless - -

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10. (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-5, and 9 - 12 are rejected under 35 USC 102 (e) as being anticipated by Rodriguez (Pub # 2003/0005452).

With respect to claim 1, Rodriguez teaches a system for providing a service having lower quality than the quality of the requested service when a network resource required for the requested service is not reservable (see e.g. [0081], lines 21-24, which teaches download services being offered at a lower bandwidth, due to bandwidth availability concerns and quality concerns, as shown in sec. [0080], lines 1-3).

With respect to claim 2, Rodriguez teaches a system of checking whether or not a network resource required for the requested service is reservable to generate a first client (see e.g. [0079], lines 1-5, which teaches a search for available resources to fulfill a client download request is performed), checking whether or not a network resource required for a service of lower quality than the quality of the requested service is reservable to generate a second result, when the first result shows that the network resource required for the requested service is not reservable (see e.g. [0081], lines 19-23, which teaches an alternate service is lower bandwidth is provided when a download option of a certain quality isn't available), notifying that the service of lower quality is reservable to request a response, when the second result shows that the service of lower quality is reservable (see e.g. [0081], lines 7-9 and 22-25, which implies that a download options list is sent to a user when PRM content of a certain bandwidth is available and

a previous download option could not be met) and providing the service of lower quality, when the response shows that the service of lower quality is requested (see e.g. [0081], lines 22-25 which implies the content with lower bandwidth is provided to the user when the user selects an alternate download selection)

With respect to claim 3, Rodriguez teaches a system for checking whether or not a network resource required for the requested service is reservable to generate a first result (see e.g. [0078], lines 21-28, which teaches resource availability for a download request are checked for sufficiency), checking whether or not a network resource required for a service of lower quality than the quality of the requested service is reservable to generate a second result when the first result shows that the network resource required for the requested service is reservable (see e.g. [0079], lines 36-40, which teaches alternative download options are generated after the system provides the user with information that the selected service is available within a download), and providing the service of lower quality, when the second result shows that the service of lower quality is requested (see e.g. [0080], lines 1-4, which teaches that the content is provided even if different from the content quality originally selected).

With respect to claim 4, Rodriguez teaches a system for checking whether or not a network resource required for the requested service is reservable to generate a first result (see e.g. [0078], lines 21-28, which teaches resource availability for a download request are checked for sufficiency), checking whether or not a network resource required for a service of lower quality than the quality of the requested service is reservable to generate a second result when the first result shows that the network resource required for the requested service is reservable (see e.g. [0079], lines 36-40, which teaches alternative download options are generated after the

system provides the user with information that the selected service is available within a download), notifying that the service of lower quality isn't reservable to request a response when the second result shows that the service of lower quality is reservable (see e.g. [0081], lines 7-9 and 22-25, which implies that a download options list is sent to a user when PRM content of a certain bandwidth is available and a previous download option could not be met), providing the service of lower quality, when the second result shows that the service of lower quality is requested (see e.g. [0081], lines 22-25 which implies the content with lower bandwidth is provided to the user when the user selects an alternate download selection), and notifying that the service of lower quality is reservable to request a response, when the second result shows that the service of lower quality is reservable (see e.g. [0081], lines 7-9 and 22-25, which implies that a download options list is sent to a user when PRM content of a certain bandwidth is available and a previous download option could not be met).

With respect to claim 5, Rodriguez teaches a system for providing a service having higher quality than quality of a current service, when a network resource required for a service of higher quality than the quality of the current service is reservable (see e.g. [0067], lines 35-37, which teaches content of a higher quality may be provided for download to users).

With respect to claims 9 and 10, Rodriguez teaches a method for checking an availability of a network resource to generate a result (see e.g. [0078], lines 24-30, which teaches a mechanism to check for sufficient resources to effect the download), judging whether or not the requested service is able to provide, based on the first result, to generate a second result (see e.g. [0079], lines 1-5, which teaches alternate download options are provided when resources needed

to fulfill a download request aren't met), preventing from requesting a service that is not able to provide, based on the second result (see e.g. [0078], lines 22-25, which teaches a subscriber isn't able to perform download when a id of insufficient resource is generated for the subscriber), and recording an item that is able to distinguish between an available service and an unavailable service (see e.g. [0078], lines 22-25, which teaches a mechanism is used to determine whether resources are sufficient to provide for download).

With respect to claim 11, Rodriguez teaches a method for preventing from selecting an unavailable service on the list (see e.g. [0073], lines 3-5, which teaches unavailable download options are omitted).

With respect to claim 12, Rodriguez teaches a system of providing a service having lower quality than the quality of the requested service when a network resource required for the requested service is not reservable and the network resource being a bandwidth (see e.g. [0081], lines 22-25 which implies the content with lower bandwidth is provided to the user when the user selects an alternate download selection).

#### **Claim Rejections - 35 USC § 103**

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter

pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 6-8 are rejected under 35 U.S.C. 103 as being unpatentable over Rodriguez (Pub # 2003/0005452) and Menon et al (Pub # US 2002/0152318), further in view of Stewart et al (Pub # 2002/0087707).

With respect to claims 6-8, Menon et al teach a method of checking whether or not a network resource required for a service of higher quality than the quality of a current service is reservable to generate a result (see e.g. [0020], lines 9-13, which teaches that alternative higher-bandwidth content may be provided by an edge server via a network resource request), checking whether or not a network resource required for a service of higher quality than the quality of the requested service is reservable to generate a result (see e.g. [0093], lines 6-10, which teaches that a source of alternative network resources may be provided in the case that the preferred resource isn't available, note that par. [0020] shows that the alternate content may be implemented as content of higher bandwidth, which would be considered higher quality to one of ordinary skill in the art), and providing the service of higher quality, when the second result shows that the service of lower quality is requested (see e.g. [0020], lines 9-13, which teaches alternative higher-bandwidth content may be provided by an edge server via a network resource request). Rodriguez discloses a limitation of notifying that the service of lower quality is reservable to request a response, when the second result shows that the service of lower quality is reservable (see e.g. [0081], lines 7-9 and 22-25, which implies that a download options list is sent to a user when PRM content of a certain bandwidth is available and a previous download option could not be met)

Menon et al and Rodriguez teach all the limitations disclosed in claims 6-7, except for notifying that the service of higher quality is reservable to request an additional response, when the result shows that the service of higher quality is reservable.

The general concept notifying that the service of higher quality is reservable to request an additional response, when the result shows that the service of higher quality is reservable is well known in the art as illustrated by Stewart et al, which discloses a limitation of notifying that the service of higher quality is reservable to request an additional response, when the result shows that the service of higher quality is reservable (see e.g. [0051], lines 10-12, which implies that a higher quality form of service is provided to a client upon a request and the sending a notification to provide a higher quality service to the client).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Menon et al and Rodriguez to include the use of notifying that the service of higher quality is reservable to request an additional response, when the result shows that the service of higher quality is reservable as taught by Stewart et al in order to improve upon distributing content among network elements, as implied in par. [0031], lines 1-3 of Stewart et al.

## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Scott whose telephone number is 571-270-1598. The examiner can normally be reached on Mon - Thurs. 7:30-5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

R.S.

12 June 2007



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